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ARMY AND NAVY.

1. *Construction of Navy Personnel Act of* 1898 *and* § 1466, *Rev. Stat.—Pay of passed assistant and assistant surgeons.*

A court is not always confined to the written words of a statute; construction is to be exercised as well as interpretation and a statute will not be con-

strued as giving higher pay to the inferior officer. Under the Navy Personnel Act of March 3, 1898, 30 Stat. 1007, and § 1466, Rev. Stat., passed assistant surgeons of the navy, as well as assistant surgeons, rank with captains in the army and are entitled to the pay of a captain mounted. *United States* v. *Farenholt*, 226.

2. *Courts-martial, personnel of—Right to pay of officer dismissed on sentence of court-martial illegally constituted.*

The prohibition in the 77th Article of War against officers of the regular army serving on courts-martial to try soldiers and officers of other forces is peremptory, and, notwithstanding the contrary construction of former articles on the same subject, an officer of the regular army, although on indefinite leave of absence, to enable him to accept a volunteer commission, is not competent to sit on a court-martial to try a volunteer officer; and if without him there would have been insufficient number there is no court and the sentence of dismissal void, and in this case an officer so sentenced and dismissed was entitled to his pay until the organization to which he belonged was mustered out. The refusal to grant an officer so discharged an honorable discharge did not under the circumstances amount to his active retention in the service and entitle him to pay after the organization to which he belonged had been discharged. *United States* v. *Brown*, 240.

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BANKRUPTCY.

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The bankruptcy act does not deprive a lienor of any remedy with which he is vested by the state law. *Hiscock* v. *Varick Bank*, 28.

2. *Provable claims—Life insurance policies—Partnership and individual debts.*

Individual policies on the life of a partner held as collateral security for his individual indebtedness can be sold by the creditor and applied to the payment of such individual debt although the debtor was also liable for partnership debts; and if the policies are fairly sold by the creditor he can prove for the balance of the individual debt and the whole of the partnership debt. *Ib.*

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COMMERCE.

1. *Interstate—State interference—C. O. D. shipments of liquor.*

A statute of Kentucky, making penal all shipments of liquor "to be paid for on delivery, commonly called C. O. D. shipments," and further pro-

viding that the place where the money is paid or the goods delivered shall be deemed to be the place of sale and that the carrier and his agents delivering the goods shall be jointly liable with the vendor, is as applied to shipments from one State to another an attempt to regulate interstate commerce and beyond the power of the State. *Adams Express Co.* v. *Kentucky*, 129.

2. *Interstate—State interference—Materiality of evidence in prosecution under state law prohibiting shipment of liquor.*

When, in a prosecution of an express company for a violation of this statute by an interstate shipment, it is averred in the indictment or stipulated by the prosecution that the shipment and delivery were made and done by the express company in the usual course of its business as a carrier, testimony that the consignee did not order the goods or that the goods were held by the agent of the company at the place of delivery for a few days to accommodate the consignee is immaterial. *Ib.*

See INTERSTATE COMMERCE COMMISSION.

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CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

Powers of Federal Government—Control over waters of Territories and of States.

Kansas having brought in this court an original suit to restrain Colorado and certain corporations organized under its laws from diverting the water of the Arkansas River for the irrigation of lands in Colorado, thereby, as alleged, preventing the natural and customary flow of the river into Kansas and through its territory, the United States filed an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands. It was not claimed that the diversion of the waters tended to diminish the navigability of the river. *Held*, that the Government of the United States is one of enumerated powers; that it has no inherent powers of sovereignty; that the enumeration of the powers granted is to be found in the Constitution of the United States, and in that alone; that the manifest purpose of the Tenth Amendment to the Constitution is to put beyond dispute the proposition that all powers not granted are reserved to the people, and that if in the changes of the years further powers ought to be possessed by Congress they must be obtained by a new grant from the people. While Congress has general legislative jurisdiction over the Territories and may control the flow of waters in their streams, it has no power to control a like flow within the limits of a State except to

preserve or improve the navigability of the stream; that the full control over those waters is, subject to the exception named, vested in the State. Hence the intervening petition of the United States is dismissed, without prejudice to any action which it may see fit to take in respect to the use of the water for maintaining or improving the navigability of the river. *Kansas* v. *Colorado*, 46.

See CONSTITUTIONAL LAW, 7; EIGHT-HOUR LAW; COURTS; PHILIPPINE ISLANDS; PORTO RICO, 2.

CONSTITUTIONAL LAW.

Commerce clause. See COMMERCE.

1. *Contracts; impairment of obligation of—Power of municipality to enter into contract within protection of Constitution.*

In view of the decisions of the highest court of Mississippi a municipality of that State may, under a broad grant of legislative authority conferred without restrictions or conditions, make a contract with a corporation, fixing a maximum rate at which water should be supplied to the inhabitants of the city for a limited period, which in the absence of fraud or convention, will be beyond legislative or municipal power to alter to the prejudice of the other contracting party under the impairment of obligation clause of the Federal Constitution. *Vicksburg* v. *Waterworks Co.*, 496.

2. *Contracts; impairment of obligation—Validity of Minnesota stockholders' liability law.*

There is a broad distinction between laws impairing the obligation of contracts and those which simply give a more efficient remedy to enforce a contract already given, and the statute of Minnesota of 1899 for the enforcement of stockholders' liability, under which the constitutional liability can be enforced by the receiver without the State, is not void under the impairment of obligation clause of the Constitution of the United States because it repealed a prior act under which the stockholders' liability could not be so enforced. *Bernheimer* v. *Converse*, 516.

3. *Contracts; impairment of obligation—Effect of judicial decision to create contract—Use of streets in New York City.*

The decision of the Court of Appeals of the State of New York in the *Elevated Railroad Cases* related to the structure of an elevated railroad for a private corporation and did not create any contract within the impairment of obligation clause of the Constitution of the United States between the City of New York and owners of property abutting on the streets which would be violated by the change of grade or erection of a viaduct for public use of the city. *Sauer* v. *City of New York*, 536.

4. *Contracts; impairment of obligation; effect of judicial decision.*

These rules applied to the case of an abutting owner on 155th Street in New York City and *held*, that the erection of the viaduct therein was merely a change of grade and that he was not thereby deprived of his property

without due process of law nor was the obligation of any contract impaired by the judgment of the Court of Appeals holding that the rule of the *Elevated Railroad Cases* did not apply in such a case (*Muhlker* v. *Harlem R. R. Co.*, 197 U. S. 544, distinguished.). *Ib.*

See FEDERAL QUESTION, 5.

Double jeopardy. See Supra, 8–13.

5. *Due process of law; deprivation of property—Easement in street of owner of abutting land under New York law—Erection of elevated railway structure.*

While under the law of the State of New York the owner of land abutting on a street has easements of access, light and air as against the erection of an elevated railway by or for a private corporation for its own exclusive purposes, he has no such easements as against the public use of the streets, or any such structure which may be erected upon the street to subserve and promote the public use, and he is not therefore deprived of his property without due process of law by the erection of such a structure for the public use. *Ib.*

See Ante, 4; PHILIPPINE ISLANDS, 2; RAILROADS, 3, 4, 6; TAXES AND TAXATION, 3.

Deprivation of property without due process of law.

See Ante, 5; PHILIPPINE ISLANDS, 2; RAILROADS, 3, 6.

6. *Equal protection of laws—Validity of Minnesota stockholders' liability law.*

An act intended to make effectual a liability which is incurred by stockholders under the constitution of the State and which operates equally upon all stockholders and assesses all by a uniform rule should not, in the absence of substantial reasons, be rendered nugatory, and the Minneosta Act of 1899 will not be declared void as violating the constitutional rights of stockholders either because it provides for fixing the liability in a proceeding within the State to which non-resident stockholders are not parties, or because it changes the procedure for collecting the assessment, and gives the receiver the right to maintain actions without the State. *Bernheimer* v. *Converse*, 516.

See RAILROADS, 3, 4.

Federal governmental powers. See CONGRESS, POWERS OF; PHILIPPINE ISLANDS.

Judicial power of United States. See JURISDICTION, A 1.

7. *Legislative powers—Effect of motive for enactment.*

An act of Congress otherwise valid is not unconstitutional because the motive in enacting it was to secure certain advantages for conditions

of labor not subject to the general control of Congress. *Ellis* v. *United States*, 246.

See CONGRESS, POWERS OF;
EIGHT-HOUR LAW.

8. *Second jeopardy; application to Philippines.*
The prohibition of double jeopardy is applicable to all criminal prosecutions in the Philippine Islands. *Grafton* v. *United States*, 333.

9. *Second jeopardy; what constitutes.*
A person is not put in second jeopardy unless his prior acquittal or conviction was by a court having jurisdiction to try him for the offense charged. *Ib.*

10. *Second jeopardy; effect of judgment of court-martial.*
The judgment of a court-martial having jurisdiction to try an officer or soldier for a crime is entitled to the same finality and conclusiveness as to the issues involved as the judgment of a civil court in cases within its jurisdiction is entitled to. *Ib.*

11. *Second jeopardy; application of prohibition.*
The same acts constituting a crime against the United States cannot, after the acquittal or conviction of the accused in a court of competent jurisdiction, be made the basis of a second trial of the accused for that crime in the same or in another court, civil or military, of the same government. *Ib.*

12. *Second jeopardy—Same acts constituting distinct offenses—Philippine Islands unlike a State.*
Although the same act when committed in a State might constitute two distinct offenses, one against the United States and the other against the State, for both of which the accused might be tried, that rule does not apply to acts committed in the Philippine Islands. The Government of a State does not derive its powers from the United States, while that of the Philippine Islands does owe its existence wholly to the United States. *Ib.*

13. *Second jeopardy; effect of acquittal by court-martial in Philippine Islands.*
A soldier in the army, having been acquitted of the crime of homicide alleged to have been committed by him in the Philippine Islands by a military court-martial of competent jurisdiction, proceeding under authority of the United States, cannot be subsequently tried for the same offense in a civil court exercising authority in that Territory. *Ib.*

CONSTRUCTION OF STATUTES.

See ARMY AND NAVY, 1; FEDERAL QUESTION, 5;
CUSTOMS DUTIES, 3; PRACTICE AND PROCEDURE, 2;
STATUTES, A.

CONTRACTS.

1. *Construction of contract of shipbuilding company with United States—Effect of release to relieve United States from liability.*

In a contract made between a building company and the United States for the construction of a battleship at a cost of over three millions of dollars it was provided that a special reserve of sixty thousand dollars should be held until the vessel had been finally tried and then paid to the company "on the execution of a final release to the United States in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of said contract." The vessel having been built and the final trial had, all moneys were paid on the execution by the company of a stipulation to "remise, release and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims and demands whatsoever, in law or in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid." *Held*, that in the absence of anything to the contrary, it will be assumed that the release which was executed was the one stipulated for in the original contract and was intended to include all matters which according to its terms were to be released by the company as a condition of final payment. The words in the release "by reason of" are equivalent to those in the original contract "by virtue of" and include all claims which grew out of the performance of the contract, although not arising from the actual construction of the vessel. *United States* v. *Wm. Cramp & Sons Co.*, 118.

2. *Construction of contract between mission board and the Hawaiian government in regard to religious institution.*

A foreign mission board maintaining a school in Hawaii in 1849 turned the school over to the government under an agreement, expressed in correspondence, that the government should maintain it as an institution for the cultivation of sound literature and solid science, that no religious tenet or doctrine contrary to those inculcated by the mission, a summary of which was transmitted in the correspondence, should be taught, and that in case the government did not so maintain it, it should pay to the mission $15,000. After maintaining the school for many years as it had been maintained under the mission, the government converted it into an agricultural college and religion ceased to be a part of the curriculum, meanwhile the constitution of Hawaii of 1894 prohibited the appropriation of any money for sectarian institutions. *Held*, in an action brought by the mission to recover the $15,000, that extrinsic evidence, as to what the parties did and the nature of the course of instruction when the agreement was made, and thereafter as continued by the government, was admissible to prove the intent of the parties as to what was meant by sound literature and solid science, and that under all the circumstances the agreement was that religious instruction was to be continued and on the failure of the government to continue such instruction the mission was entitled to recover the $15,000. The government of Hawaii was not relieved from its contract obligation by

reason of the adoption of the constitutional prohibition against appropriation for sectarian institutions. *Lowrey* v. *Hawaii*, 206.

See CONSTITUTIONAL LAW, 1, 2, 3, 4;
FEDERAL QUESTION, 5;
SOVEREIGNTY.

CONVEYANCES.

See INDIANS, 1.

CORPORATIONS.

1. *Stockholders; enforcement of liability—Minnesota law.*

This court in this case followed the judgment of the highest court of the State in determining that a corporation was not within the exception, constitutional and statutory, as to stockholders' liability in favor of certain classes of corporations. Where, as in Minnesota, stockholders' liability is fixed and measured by the Constitution, a stockholder upon acquiring his stock incurs an obligation arising from the constitutional provisions, and as such capable of being enforced in the courts not only of that State but of another State and of the United States. *Bernheimer* v. *Converse*, 516.

2. *Stockholders' liability—State regulation to make effectual.*

One who becomes a member of a corporation assumes the liability attaching to such membership and becomes subject to such regulations as the State may lawfully make to render the liability effectual. *Ib.*

3. *Stockholders' liability—Right of receiver to sue to collect.*

While a chancery receiver, having no authority other than that arising from his appointment, may not maintain an action in another jurisdiction, a receiver may sue in a foreign jurisdiction to collect statutory liability of stockholders where the statute confers the right upon the receiver as *quasi*-assignee. *Ib.*

4. *Stockholders' liability; application of local law limiting time of action to collect.*

Section 55 of ch. 588, N. Y. Laws of 1892, limiting the time within which to bring an action against a stockholder for a debt of the corporation does not apply to an action brought by a receiver to enforce statutory liability of stockholder of a foreign corporation. *Ib.*

See CONSTITUTIONAL LAW, 1, 2, 5, 6;
JURISDICTION, A 4;
RAILROADS.

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See PRACTICE AND PROCEDURE, 1.

COURTS.

Source of authority of District Court of the United States for Porto Rico.

The District Court of the United States is not a constitutional court of the

United States; its authority emanates wholly from Congress under the sanction of its power to govern territory occupying the relation that Porto Rico does to the United States. *Romeu* v. *Todd*, 358.

See ARMY AND NAVY, 1; JURISDICTION; CORPORATIONS, 1; MANDAMUS; FEDERAL QUESTION; PORTO RICO, 2; STARE DECISIS.

COURTS-MARTIAL.

1. *Conclusiveness of judgment of.*

The judgment of a court-martial having jurisdiction to try an officer or a soldier for a crime is entitled to the same finality and conclusiveness as to the issues involved as the judgment of a civil court in cases within its jurisdiction is entitled to. *Grafton* v. *United States*, 333.

2. *Criminal jurisdiction—Effect of judgment on civil courts.*

General courts-martial may take cognizance, under the 62d article of war, of all crimes, not capital, committed against public law by an officer or soldier of the Army within the limits of the territory within which he is serving; and, while this jurisdiction is not exclusive, but only concurrent with that of the civil courts, if a court-martial first acquires jurisdiction its judgment cannot be disregarded by the civil courts for mere error, or for any reason not affecting the jurisdiction of the court rendering it. *Ib.*

See ARMY AND NAVY, 2; CONSTITUTIONAL LAW, 10, 13.

CRIMINAL LAW.

Intentional violation of law; what constitutes.

One who intentionally adopts certain conduct in certain circumstances known to him, which conduct is unlawful, intentionally breaks the law. *Ellis* v. *United States*, 246.

See COMMERCE, 1, 2; CONSTITUTIONAL LAW, 8, 9, 11, 12, 13; COURTS-MARTIAL, 2.

CUSTOMS DUTIES.

1. *Classification of imports; designation of articles.*

The commercial designation of an article, which designation was known at the time of the passage of a tariff act, is the name by which the article should be classified for the payment of duty without regard to the scientific designation and material of which it may be made or the use to which it may be put. *Goat & Sheepskin Co.* v. *United States*, 194.

2. *Classification of imports—What constitutes "wool."*

The word "wool" in paragraph 360 of the tariff act of July 24, 1897, 30 Stat. 151, 183, does not include a substance which, while the growth upon a sheepskin is, nevertheless, commercially known, designated, and dealt

in, as Mocha hair, having none of the characteristics of wool, and which would not be accepted by dealers therein as a good delivery of wool. *Ib.*

3. *Classification of imports—Duty on metal beads strung on cotton cords.* In construing a tariff act the court cannot disregard the condition upon which the law makes the duty depend. Under paragraph 408 of the tariff act of 1897, 30 Stat. 151, 189, metal beads strung on cotton cords or strings, although only temporarily strung to facilitate transportation, are subject to the higher duty of forty-five per cent and not to the lower duty of thirty-five per cent as beads "not threaded or strung." *Frankenberg* v. *United States*, 224.

See PHILIPPINE ISLANDS.

DAMAGES.

See JURISDICTION, B 1;
NATIONAL BANKS.

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See JUDGMENTS AND DECREES, 2.

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See PHILIPPINE ISLANDS, 1;
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See INDIANS, 2.

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See CONSTITUTIONAL LAW, 8–13.

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See CONSTITUTIONAL LAW, 4, 5; RAILROADS, 3, 4, 6;
PHILIPPINE ISLANDS, 2; TAXES AND TAXATION, 3.

EASEMENTS.

See CONSTITUTIONAL LAW, 5.

EIGHT-HOUR LAW.

1. *Constitutionality of act of August* 1, 1892—*Power of Congress over construction of public works.*

The provisions in the act of August 1, 1892, 27 Stat. 340, limiting the hours of laborers and mechanics employed by the United States or any contractor or subcontractor upon any of the public works of the United States to eight hours per day except in cases of extraordinary emergency, and imposing penalties for the violation thereof, are constitutional and within the powers of Congress. In this respect Congress has the same power as a State has over the construction of its public works. (*Atkin* v. *Kansas*, 191 U. S. 207.) *Ellis* v. *United States*, 246.

2. *Extraordinary emergency within meaning of.*

The disappointment of a contractor with regard to obtaining some of his materials did not, under the circumstances of this case, amount to an extraordinary emergency within the meaning of the statute and justify him in having laborers work more than eight hours. *Ib.*

3. *Laborers and mechanics within meaning of act.*

Persons employed on dredges and scows, in dredging a channel in a harbor are not within the meaning of the act of August 1, 1892, laborers or mechanics employed on any of the public works of the United States. *Ib.*

See CONSTITUTIONAL LAW, 7.

EJECTMENT.

See PUBLIC LANDS, 2.

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See CONSTITUTIONAL LAW, 3, 4, 5.

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FEDERAL QUESTION.

1. *Whether state regulation of railroad unreasonable not a Federal question.*
Whether a regulation of a state railroad commission otherwise legal is arbitrary and unreasonable because beyond the scope of the powers delegated to the commission is not a Federal question. *Atlantic Coast Line* v. *North Carolina Corp. Comm.*, 1.

2. *Rejection by state court as evidence of letter from superior to subordinate Federal officer.*
The rejection as evidence, by the state court, of a letter written by the Secretary of the Interior to the Commissioner of the Land Office, on the ground that it was *res inter alios*, held, in this case proper and not to present any Federal question. *Chapman & Dewey Land Co.* v. *Bigelow*, 41.

3. *Questions local and not Federal—Effect of state statutes.*
Whether the statutes of a State authorize the incorporation of a bridge company to construct a bridge over a navigable river separating it from another State; whether such statutes confer the right of eminent do-

main on a corporation of another State, and whether such a corporation can exercise therein powers other than those conferred by the State of its creation, are all questions of state law, involving no Federal questions, and the rulings of the highest court of the State are final and conclusive upon this court. *Stone* v. *Southern Illinois Bridge Co.*, 267.

4. *Conformity of state statute with state constitution not a Federal question.* Whether the proceedings in the enactment of a state statute conform with the state constitution is to be determined by the state court and its judgment is final. *Smith* v. *Jennings*, 276.

5. *State court's construction of state statute held not to raise any Federal question.* A state statute directing the state treasurer to write certain bonds off the books in his office and no longer to carry them as a debt of the State does not impair any existing obligation of the State to pay the bonds nor affect the remedy to recover upon them; and where the state court has so construed the act, in refusing to enjoin the treasurer from making the entries required thereby, at the suit of one claiming to own the bonds, no Federal right of the plaintiff is denied, obstructed, impaired or affected and the writ of error will be dismissed. *Ib.*

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 8–13.
PHILIPPINE ISLANDS, 2.

FOURTEENTH AMENDMENT.

See TAXES AND TAXATION, 3;
CONSTITUTIONAL LAW;
RAILROADS, 4.

GOVERNMENT CONTRACTS.

See EIGHT-HOUR LAW.

GOVERNMENT OF THE UNITED STATES.

See CONGRESS, POWERS OF.

GRANTS.

See PUBLIC LANDS.

HAWAII.

See CONTRACTS, 2.

HOMESTEADS.

See PUBLIC LANDS, 4.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 1, 2, 3, 4;
FEDERAL QUESTION, 5.

IMPORTS.

See CUSTOMS DUTIES.

INDIANS.

1. *Title to tribal lands; restraint on alienation.*

The title of Indians to lands belonging to the tribe is more than the right of mere occupation, and although the actual title may be in the United States it is held in trust for the Indians and the restraint on alienation should not be exaggerated. *United States* v. *Paine Lumber Co.*, 467.

2. *Right of allottee Indians to cut timber.*

Indian allottees under the Stockbridge and Munsie treaty of 1856, 11 Stat. 663, and the Act of February 6, 1871, 16 Stat. 404, were vested with sufficient title in their allotments to authorize the cutting of timber, for sale and not by way of improvements, without the approval of the Department of the Interior. *Ib.*

See PUBLIC OFFICERS, 1.

INJUNCTION.

See CONGRESS, POWERS OF; JUDGMENTS AND DECREES, 2; JURISDICTION, A 4; B 1; PATENTS; STATES, 7.

INTERSTATE COMMERCE.

See COMMERCE;
INTERSTATE COMMERCE COMMISSION, 4.

INTERSTATE COMMERCE COMMISSION.

1. *Force and effect of findings of.*

The findings of the Interstate Commerce Commission are made by the law *prima facie* true; and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience. *Illinois Central R. R. Co.* v. *Interstate Com. Comm.*, 441.

2. *Conclusiveness of findings.*

Where the inquiry before the Interstate Commerce Commission is essentially one of fact, the existence of competition cannot in this court be made an inference of law dominating against the actual findings of the commission and their affirmance by the Circuit Court. *Ib.*

3. *Review of findings; effect of affirmance by Circuit Court and Circuit Court of Appeals.*

The reasonableness of a rate is a question of fact, and while the conclusions of the commission are subject to review if that body excludes facts and circumstances that ought to have been considered they will not after having been affirmed by the Circuit Court and Circuit Court of Appeals, be reversed because the commission did not adopt the presumptions of mixed law and fact put forward by appellants as elements for determining the reasonableness of a rate. *Ib.*

4. *Power of Commission in considering the subject and operation of new classification—Soap rate case.*

The Interstate Commerce Commission, in making an investigation on the complaint of a shipper has, in the public interest, the power disembarrassed by any supposed admissions contained in the statement of the complaint to consider the whole subject and the operation of the new classification complained of in the entire territory; also how far its going into effect would be just and reasonable and would create preferences or engender discriminations and whether it is in conformity with the requirements of the act to regulate commerce. And if it finds that the new classification disturbs the rate relations thereupon existing in the official classification territory and creates preferences and engenders discriminations it may, in order to prevent such result, prohibit the further enforcement of the changed classification, and an order to that effect is within the power conferred by Congress on the Commission; and so held as to an order of the Commission directing carriers from further enforcing throughout official classification territory a changed classification in regard to common soap in less than carload lots. *Cincinnati &c. Ry. Co.* v. *Interstate Com. Comm.*, 142.

See JURISDICTION, B 2, 3.

INTERSTATE LAW.

See STATES, 1.

INTOXICATING LIQUORS.

See COMMERCE, 1.

IRRIGATION.

See JURISDICTION, A 1;
STATES, 2.

JEOPARDY.

See CONSTITUTIONAL LAW, 8–13.

JUDGMENTS AND DECREES.

1. *Cogency of judgment rendered upon demurrer.*

That a judgment was rendered upon demurrer does not affect its cogency if it is otherwise efficacious to bring into play the presumption of the thing adjudged. *Yates* v. *Utica Bank*, 181.

2. *Effect of decree enjoining municipality from regulating water rates.*

A decree must be read in the light of the issues involved in the pleadings and the relief sought, and a decree in a suit brought by a water company against a municipality to enjoin it from regulating rates does not finally dispose of the right of the city to regulate rates under a law passed after the contract went into effect and after the bill was filed. *Vicksburg* v. *Waterworks Co.*, 496.

3. *Res judicata; extent of application.*

Rights between litigants once established by the final judgment of a court of competent jurisdiction must be recognized in every way, and wherever the judgment is entitled to respect, by those who are bound thereby. *Kessler* v. *Eldred*, 285.

4. *Res judicata; identity of causes of action.*

A judgment of dismissal based on the ground that plaintiff in an action against the directors of a national bank had not set up any individual wrong suffered by him but solely an injury sustained in common with all other creditors of the bank, is not *res adjudicata* of a right of action between the same parties to recover for individual loss suffered as distinct from the right of the bank. *Yates* v. *Utica Bank*, 181.

See CONSTITUTIONAL LAW, 3, 10; INTERSTATE COMMERCE COMMISSION, 1; COURTS-MARTIAL, 2; JURISDICTION, A 6; B 2.

JUDICIAL POWER.

See JURISDICTION, A.

JURISDICTION.

A. OF THIS COURT.

1. *Controversies between States—Justiciable nature of controversy.*

Kansas having brought in this court an original suit to restrain Colorado and certain corporations organized under its laws from diverting the waters of the Arkansas River for the irrigation of lands in Colorado, thereby, as alleged, preventing the natural and customary flow of the river into Kansas and through its territory, *held*, that the controversy between the parties plaintiff and defendant is one of a justiciable nature. By the Constitution the entire judicial power of the United States is vested in its courts, specifically included therein, being a grant to the Supreme Court of jurisdiction over controversies between two or more States. *Kansas* v. *Colorado*, 46.

2. *To review decision of state court dismissing bill to remove cloud on title.*

Writ of error to review decision of the state court, dismissing bill to remove cloud on title to lands under water, dismissed for want of jurisdiction on the findings of the court below and the authority of the cases cited. *Chapman & Dewey Land Co.* v. *Bigelow*, 41.

3. *To review judgment of state court where an immunity claimed under* § 5239, *Rev. Stat.*

Where in the trial and appellate courts an immunity was claimed under § 5239, Rev. Stat., as to the rule of liability to be applied to directors of a national bank and such immunity was denied, this court has jurisdiction to review the judgment under § 709, Rev. Stat., even if in other respects it might not have jurisdiction. *Yates* v. *Jones National Bank*, 158.

4. *Original—Of suit by State against citizen of another State for the abatement of a nuisance.*

This court has jurisdiction to, and at the suit of a State will, enjoin a corporation, citizen of another State, from discharging over its territory noxious fumes from works in another State where it appears that those fumes cause and threaten damage on a considerable scale to the forests and vegetable life, if not to health, within the plaintiff's State. *Georgia* v. *Tennessee Copper Co.*, 230.

5. *Original; of suit by one State against another for an accounting.*

This court has original jurisdiction of a suit by the State of Virginia against the State of West Virginia for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts to adjudicate and determine the amount, if any, due the former by the latter. *Virginia* v. *West Virginia*, 290.

6. *Original—Suits between States—Effect of question of how judgment will be enforced—Consent of State to be sued.*

Consent to be sued in this court by another State is given by a State, by, and at the time of, its admission to the Union. It will be presumed that the legislature of a State will provide for the satisfaction of any judgment that may be rendered against it, and the jurisdiction and power of this court is not affected by the question of how it will be enforced. If a State should repudiate its obligation to satisfy judgment rendered against it, this court will after the event consider the means by which it may be enforced. *Ib.*

7. *Original—Suits between States—Determination of questions, raised by demurrer, postponed to hearing on the merits.*

The court having jurisdiction of the controversy, the effect of the provisions in the constitution of West Virginia, as well as the several statutes enacted by that State and by Virginia on the liability of West Virginia, for a part of the public debt of Virginia, and the relations of Virginia to the holders of bonds will not be determined on demurrer, but postponed to the merits. *Ib.*

B. Of Circuit Court.

1. *Of bill in equity to restrain filing or enforcement of schedule of unreasonable railroad rates.*

Although an action at law for damages to recover unreasonable railroad rates which have been exacted in accordance with the schedule of rates as filed is forbidden by the Interstate Commerce Act (*Texas & Pacific Railway Co.* v. *Abilene Cotton Co.*, 204 U. S. 426), the Circuit Court may entertain jurisdiction of a bill in equity to restrain the filing or enforcement of a schedule of unreasonable rates or a change to unjust or unreasonable rates. *Southern R. R. Co.* v. *Tift*, 428.

2. *To render decree based upon findings and conclusions of Interstate Commerce Commission.*

Where, as in this case, the Circuit Court granted no relief on the original bill

prejudicial to the railway company, but sent the parties to the Interstate Commerce Commission, and afterwards rendered a decree based upon the findings and conclusions of that commission and testimony adduced before it, which was stipulated into the case, this court will not reverse the decree, as affirmed by the Circuit Court of Appeals, either because the Circuit Court was without jurisdiction, or because an order of reference in the case was too broad in requiring the master to ascertain the amounts paid by shippers in increased rates after the schedules sought to be enjoined went into effect. *Ib.*

3. *To adjudge reparation, on stipulation by parties to action under* § 16 *of Interstate Commerce Act.*

Although reparation for excess rates must be obtained in a proceeding before the Interstate Commerce Commission, the parties to an action brought under § 16 of the Interstate Commerce Act may stipulate after the commission has declared the rate complained of to be excessive that the court adjudge the amount of reparation, and presumably, after the master has reported, the court will make reparation adequate for the injury and award only the advance on the old rate and to those who are parties to the cause. *Ib.*

C. Of Courts-martial.

See Courts-martial, 2.

D. Generally.

See Taxes and Taxation.

JUSTICIABLE CONTROVERSY.

See Jurisdiction, A 1.

LABOR.

See Constitutional Law, 7;
Eight-hour Law.

LAND GRANTS.

See Public Lands.

LAND OFFICE.

See Public Officers, 1.

LEGISLATIVE POWERS.

See Constitutional Law, 7;
Congress, Powers of;
Eight-hour Law.

LIENS.

See Bankruptcy, 1;
Pledge, 3.

LIFE INSURANCE POLICIES.
See BANKRUPTCY, 2.

LIMITATION OF ACTIONS.
See CORPORATIONS, 4.

LIQUORS.
See COMMERCE, 1.

LIS PENDENS.
See PHILIPPINE ISLANDS, 3.

LOCAL LAW.

Arizona. Rev. Stat. § 2282 (see Statutes, A 2). *Copper Queen Mining Co.* v. *Arizona Board*, 474.

Iowa. Act of July 14, 1856 (see Public Lands, 1). *Iowa Railroad Land Co.* v. *Blumer*, 482.

Minnesota. Stockholders' liability law of 1899 (see Corporations; Constitutional Law, 2, 6). *Bernheimer* v. *Converse*, 516.

Mississippi. Municipal contracts (see Constitutional Law, 1). *Vicksburg* v. *Waterworks Co.*, 496.

New York. Waiver by pledgor—Validity of sale of pledge. Under the law of New York a pledgor may waive strict performance of the common-law duties of the pledgee and if so waived a sale may be held without notice, demand or advertisement. *Hiscock* v. *Varick Bank*, 28.
Easements in streets (see Constitutional Law, 5). *Sauer* v. *City of New York*, 536.
Sec. 55 of ch. 588, Laws of 1892, limitation of actions against stockholders (see Corporations, 4). *Bernheimer* v. *Converse*, 516.

Porto Rico. *See* PORTO RICO, 2.

Wisconsin. Law of pledge (see Pledge). *Warehousing Co.* v. *Hand*, 415.

Generally. *See* BANKRUPTCY, 1; FEDERAL QUESTION; PRACTICE AND PROCEDURE, 2; STATES, 2.

MANDAMUS.

Writ will not issue to compel Circuit Court to remand case.
The writ of mandamus cannot be used to perform the office of an appeal or writ of error; it will not issue to compel the Circuit Court to reverse its decision refusing to remand a case removed by a defendant on the ground that the controversy between it and the plaintiff is separate and fully determinable without the presence of the other defendants. Such a decision being within the jurisdiction and discretion of the court should be reviewed after final judgment by appeal or writ of error. *In re Pollitz*, 323.

MISSIONS.

See CONTRACTS, 2.

MORTGAGE NOTES.

See TAXES AND TAXATION.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 1;
JUDGMENTS AND DECREES, 2;
STATES, 8.

NATIONAL BANKS.

Liability of directors; rule by which measured.

The National Banking Act as embodied in § 5239, Rev. Stat., affords the exclusive rule by which to measure the right to recover damages from directors, based upon a loss resulting solely from their violation of a duty expressly imposed upon them by a provision of the act; and that liability cannot be measured by a higher standard than that imposed by the act. *Yates* v. *Jones National Bank*, 158.

See JUDGMENTS AND DECREES, 4;
JURISDICTION, A 3.

NAVIGABLE WATERS.

Deviation in construction of bridge over navigable waters; from plans approved by Secretary of War—Power of State to authorize extension of bridge.

The act of January 26, 1901, 31 Stat. 741, having authorized the construction by an Illinois corporation of a bridge and approaches across the Mississippi River, it is within the power of one of the States within which the bridge was constructed to authorize extensions thereof and connections therewith necessary and proper to make it available for the use contemplated by the statute, and although such extensions and connections were not within the plans and specifications of the bridge itself and its approaches as approved by the Secretary of War, the condemnation of land necessary for the bridge company to construct them is not in contravention of § 9 of the act of March 3, 1899, 30 Stat. 1151, making it unlawful to deviate in the construction of any bridge over navigable waters from the plans approved by the Secretary of War. *Stone* v. *Southern Illinois Bridge Co.*, 267.

See CONGRESS, POWERS OF;
FEDERAL QUESTION, 3.

NAVY PERSONNEL ACT.

See ARMY AND NAVY, 1.

NEGLIGENCE.

See PENALTIES AND FORFEITURES, 2.

NEGOTIABLE INSTRUMENTS.
See PLEDGE.

NOTES.
See TAXES AND TAXATION.

NOTICE.
See PORTO RICO, 1;
PUBLIC LANDS, 3.

NUISANCE.
See JURISDICTION, A 4;
STATES, 6, 7.

OBITER DICTA.
See PHILIPPINE ISLANDS, 3.

OFFICIAL CLASSIFICATION TERRITORY.
See INTERSTATE COMMERCE COMMISSION, 4.

OSAGE INDIAN LANDS.
See PUBLIC OFFICERS, 2.

PARTNERSHIP.
See BANKRUPTCY, 2.

PATENTS.

Infringement suits; restraint of—Res judicata.
The defeated party in an infringement suit will be restrained by a court of equity from interfering with the business of the successful defendant by bringing infringement suits based on the same patents against the customers of the latter. *Kessler* v. *Eldred*, 285.

PENALTIES AND FORFEITURES.

1. *Test of liability.*
Where a statute creates a duty and prescribes a penalty for its non-performance the rule prescribed by the statute is the exclusive test of liability. *Yates* v. *Jones National Bank*, 158.

2. *Statutory; proof of intentional violation of statute.*
Where by a statute a responsibility is made to arise from its violation knowingly, proof of something more than negligence is required and that the violation was in effect intentional. *Ib.*

PHILIPPINE ISLANDS.

1. *Delegation of authority by Congress in respect of.*
Congress in dealing with the Philippine Islands may delegate legislative

authority to such agencies as it may select and may ratify the acts of agents as fully as if such acts had been specially authorized by a prior act of Congress. *United States* v. *Heinszen*, 370.

2. *Ratification of imposition and collection of duties; power of Congress as to.*
The act of June 30, 1906, 34 Stat. 636, legalizing and ratifying the imposition and collection of duties by the authorities of the United States in the Philippine Islands prior to March 8, 1902, was within the power of Congress and can be given effect without depriving persons who had paid such duties of their property without due process of law or taking their property for public use without compensation in violation of the Fifth Amendment. *Ib.*

3. *Ratification by Congress; power not affected by pendency of suits involving acts ratified.*
The mere commencement of a suit does not affect the right of Congress to ratify executive acts, and the fact that at the time the ratifying statute was enacted actions were pending for the recovery of sums paid does not cause the statute to be repugnant to the Constitution. References in *De Lima* v. *Bidwell*, 182 U. S. 1, as to want of power to ratify after suit brought, are to be regarded as *obiter dicta*. *Ib.*

See CONSTITUTIONAL LAW, 8, 12, 13.

PLEDGE.

1. *Possession necessary.*
The general law of pledge requires possession and it cannot exist without it, and this is the law in Wisconsin. *Warehousing Co.* v. *Hand*, 415.

2. *Warehouse receipts; negotiability.*
Where there is no delivery or change of possession receipts issued by a warehouse company are not entitled to the status of negotiable instruments, the transfer of which operates as a delivery of the property mentioned therein. *Union Trust Co.* v. *Wilson*, 198 U. S. 530, distinguished. *Ib.*

3. *Priority of lien of pledgee over title of trustee in bankruptcy.*
Although the assignee or trustee in bankruptcy stands in the shoes of the bankrupt, and property in his hands unless otherwise provided in the bankrupt act is subject to all the equities impressed upon it in the hands of the bankrupt, on the facts in this case and the law of the State there was no valid pledge of, and no equitable lien on, the merchandise in favor of the holders of warehouse receipts, which take precedence of the title of the trustee. *Ib.*

See BANKRUPTCY, 2;
LOCAL LAW (N. Y.);
STARE DECISIS.

PORTO RICO.

1. *Application of local law requiring cautionary notice of pending suit affecting real property.*
The local statutory law of real property in Porto Rico, requiring the giving

and recording of a cautionary notice of a pending suit in order to affect third parties dealing with the recorded owner, not having been altered, amended or repealed applies to a suit brought on the equity side of the District Court of the United States for Porto Rico, and notwithstanding the provisions of § 34 of the Foraker Act, constructive notice of the pendency of such an action is not, in the absence of the cautionary notice required by the local law, operative against innocent purchasers. *Romeu* v. *Todd*, 358.

2. *Control by Congress of local law.*

All the local law of Porto Rico is within the legislative control of Congress, and under § 8 of the Foraker Act, 31 Stat. 79, the local law remains in force until altered, amended or repealed by Congress or in the manner provided in the act, and cannot be disregarded by the courts. *Ib.*

See COURTS.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF;
PHILIPPINE ISLANDS.

PRACTICE AND PROCEDURE.

1. *Abandonment of writ of error; when presumed.*

If one of the plaintiffs in error does not furnish a cost bond, appear by counsel, or file any brief in this court, he will be presumed to have abandoned the prosecution of the writ and it will be dismissed as to him. *Yates* v. *Jones National Bank*, 158.

2. *Following state court's interpretation of state statute.*

While this court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute adopted by the local court. *Copper Queen Mining Co.* v. *Arizona Board*, 474.

See INTERSTATE COMMERCE COMMISSION, 2;
JURISDICTION, A 6, 7.

PRESCRIPTION.

See PUBLIC LANDS, 2.

PRESUMPTIONS.

Definition of.

A presumption is the expression of a process of reasoning and of inferring one fact from another, and most if not all the rules of indirect evidence may be expressed as such, but the fact on which the inference is based must first be established before the law can draw its inference. *Illinois Central R. R. Co.* v. *Interstate Com. Comm.*, 441.

See CONTRACTS, 1;
INTERSTATE COMMERCE COMMISSION, 3;
JURISDICTION, A 6;
PRACTICE AND PROCEDURE, 1;
STATUTES, A 1.

PRIORITIES.

See PLEDGE.

PRIVILEGES AND IMMUNITIES.

See JURISDICTION, A 3.

PROPERTY RIGHTS.

See RAILROADS, 4.

PUBLIC LANDS.

1. *Grant to Dubuque & Pacific R. R. Co.; when right of company attached.*

Under the act of Congress of May 15, 1856, 11 Stat. 9, and the act of the legislature of Iowa of July 14, 1856, the grant to the Dubuque & Pacific Railroad Co. was *in præsenti* and the title passed from the United States and vested in the State of Iowa when the map of definite location was lodged in the General Land Office, and the right of the company then attached. (*Iowa Falls Land Co.* v. *Griffey*, 143 U. S. 32.) *Iowa Railroad Land Co.* v. *Blumer*, 482.

2. *Title of railroad under land grant; right to maintain ejectment where final certificate and patent wanting.*

Where a grant is *in præsenti* and nothing remains to be done for the administration of the grant in the Land Office, and the conditions have been complied with and the grant fully earned, the company has such a title, notwithstanding the want of final certificate and the issue of the patent, as will enable it to maintain ejectment against one wrongfully on the lands, and prescription will run in favor of one in adverse possession under color of title. (*Deseret Salt Co.* v. *Tarpey*, 142 U. S. 421; *Toltec Ranch Co.* v. *Cook*, 191 U. S. 532.) *Ib.*

3. *Rights of entryman on lands within place limits of railway grant.*

Although one who in good faith enters and occupies lands within the place limits of a railway grant *in præsenti* may not obtain any adverse title against the government, if, as in this case, his possession is open, notorious, continuous and adverse, it may, if the railway company fails to assert its rights, ripen into full title as against the latter, notwithstanding the entry in the Land Office was cancelled without notice as having been improperly made and allowed. *Ib.*

4. *Sale; effect as relinquishment of right to enter as homestead.*

Petition for rehearing in *Love* v. *Flahive*, 205 U. S. 195, denied. A sale made by a party who is in possession of a tract of public land with an intent thereafter to enter it as a homestead is equivalent to a relinquishment of the right to enter, and the Department may properly treat the party making the sale as having no further claims upon the land. He may not sell and still have the rights of one who has not sold; nor does he by merely continuing in possession create a new right of entry against the party in whose favor he relinquished his right. *Love* v. *Flahive*, 356.

5. *Power of States over land grants and appropriations for agricultural colleges.*
The land grants made for establishment of agricultural colleges by the act of July 2, 1862, 12 Stat. 503, as amended by the act of March 3, 1883, 22 Stat. 484, and the permanent appropriations for the support of such institutions under the act of August 30, 1890, 26 Stat. 415, were made to the States themselves, and not to any of the institutions established by the States, *Haire* v. *Rice*, 204 U. S. 291, and the disposition of the interest on the land grant fund and the appropriation is wholly within the power of each State acting through its legislature in accordance with the trust imposed upon it by the act of Congress, and an institution, although established by the State for agricultural education, cannot compel the payment of any part thereof to it. *Wyoming Agricultural College* v. *Irvine*, 278.

See PUBLIC OFFICERS, 1.

PUBLIC OFFICERS.

1. *Register of United States Land Office; compensation to which entitled.*
Under the Osage Indian treaty of September 29, 1865, and §§ 2237-2241, Rev. Stat., a register of the United States Land Office is not entitled to any additional compensation beyond the maximum of $2,500 per annum for services in connection with sales of land provided for by treaty. *Stewart* v. *United States*, 185.

2. *Registers and receivers of Land Office—Compensation—Effect of act of March*, 1903, § 13.
Section 13 of the Act of Congress of March, 1903, 32 Stat. 1903, permitting registers and receivers to bring suit in the Court of Claims for commissions and compensation for sales of Osage Indian lands simply provided for presentation of the claims and for a decision on the merits without any admission that any sum was due or assumption that the claims were meritorious. *Ib.*

See ARMY AND NAVY.

PUBLIC WORKS.

See EIGHT-HOUR LAW.

RAILROADS.

1. *Determination of reasonableness of railroad rate.*
In determining the reasonableness of a railroad rate, expenditures for additions to construction and equipment to handle the traffic should be distributed over the period of the duration of those additions and not charged entirely against the revenue of the year in which they are made. (*Union Pacific Railway Co.* v. *United States*, 99 U. S. 402, distinguished.) *Illinois Central R. R. Co.* v. *Interstate Com. Comm.*, 441.

2. *Power of state railroad commission to compel company to make connections with other roads.*
It is within the power of a state railroad commission to compel a railroad company to make reasonable connections with other roads so as to

promote the convenience of the traveling public, and an order requiring the running of an additional train for that purpose, if otherwise just and reasonable, is not inherently unjust and unreasonable because the running of such train will impose some pecuniary loss on the company. *Atlantic Coast Line* v. *North Carolina Corp. Comm.*, 1.

3. *State regulation as to schedule; constitutionality of.*
An order of a state railroad commission requiring a railroad company to so arrange its schedule as to furnish transportation between two points so as to make connections with through trains, *held*, under the circumstances of this case, not to be so arbitrary or unreasonable as to transcend the limits of regulation and to be in effect either a denial of due process of law or a deprivation of the equal protection of the laws, or a taking of property without compensation. *Ib.*

4. *Validity of state regulation under Fourteenth Amendment.*
The public power to regulate railroads and the private right of ownership of such property coexist and do not the one destroy the other; and where the power to regulate is so arbitrarily exercised as to infringe the rights of ownership the exertion is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. *Ib.*

5. *State regulation as to state business.*
Railroad companies from the public nature of the business by them carried on, and the interest which the public have in their operation are subject as to their state business to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end. *Ib.*

6. *Power of State to compel performance of duty entailing pecuniary loss.*
While the enforcement by a State of a general scheme of maximum rates so unreasonably low as to be unjust and unreasonable may be confiscation and amount to taking property without due process of law, the State has power to compel a railroad company to perform a particular and specified duty necessary for the convenience of the public even though it may entail some pecuniary loss. (*Smyth* v. *Ames*, 169 U. S. 526, distinguished.) *Ib.*

See CONSTITUTIONAL LAW, 5; INTERSTATE COMMERCE COMMISSION;
FEDERAL QUESTION, 1; JURISDICTION, B;
PUBLIC LANDS, 2.

RAILROAD COMMISSIONS.

See FEDERAL QUESTION, 1;
RAILROADS, 2, 3, 5.

RAILROAD LAND GRANTS.

See PUBLIC LANDS, 1, 3.

RAILROAD RATES.
See JURISDICTION, B.

RATES.
See CONSTITUTIONAL LAW, 1;
INTERSTATE COMMERCE COMMISSION;
JUDGMENTS AND DECREES, 2;
JURISDICTION, B;
RAILROADS, 1, 6;
STATES, 8.

RATIFICATION.
See PHILIPPINE ISLANDS.

REAL PROPERTY.
See INDIANS, 1;
PORTO RICO, 1.

RECEIVERS.
See CONSTITUTIONAL LAW, 2, 6;
CORPORATIONS, 3, 4.

RECLAMATION OF LANDS.
See CONGRESS, POWERS OF;
JURISDICTION, A 1;
STATES, 3.

REGISTERS OF LAND OFFICE.
See PUBLIC OFFICERS, 1.

REHEARING.
Petition for rehearing in *Love* v. *Flahive*, 205 U. S. 195, denied, 356.

RELEASE.
See CONTRACTS, 1.

REMEDIES.
See BANKRUPTCY, 1.

REPARATION.
See JURISDICTION, B 3.

RES JUDICATA.
See JUDGMENTS AND DECREES, 3, 4;
PATENTS.

RIPARIAN RIGHTS.
See JURISDICTION, A 2;
STATES, 2, 3, 4.

RIVERS.
See STATES, 2, 3.

SALES.
See LOCAL LAW (N. Y.);
PUBLIC LANDS, 4.

SCHEDULES.
See RAILROADS, 3.

SCOWS.
See EIGHT-HOUR LAW, 3.

SECOND JEOPARDY.
See CONSTITUTIONAL LAW, 8–13.

SITUS FOR TAXATION.
See TAXES AND TAXATION.

SOAP RATE CASE.
See INTERSTATE COMMERCE COMMISSION, 4.

SOVEREIGNTY.

Effect of making contract, on sovereignty of Government.

Although, in the absence of special laws, the Government, purely as a contractor, may stand like a private person, it does not, by making a contract, waive its sovereignty or give up its power to make laws which render criminal a breach of the contract. *Ellis* v. *United States*, 246.

See CONGRESS, POWERS OF;
STATES, 1, 6, 7.

STARE DECISIS.

Decisions of state court on local question.

The extent and validity of a pledge are local questions and the decisions of the state court are binding on this court. *Hiscock* v. *Varick Bank*, 28.

STATES.

1. *Relation between States—Interstate law.*

In a qualified sense and to a limited extent the separate States are sovereign and independent, and the relations between them partake something of the nature of international law. This court in appropriate cases enforces the principles of that law, and in addition by its decisions of controversies between two or more States is constructing what may not improperly be called a body of interstate law. *Kansas* v. *Colorado*, 46.

2. *Riparian rights—Enforcement against State of its own local rule.*
In a suit brought by a State which recognizes the right of riparian proprietors to the use of flowing waters for purposes of irrigation, subject to the condition of an equitable apportionment, against a State which affirms a public right in flowing waters, it is not unreasonable to enforce against the plaintiff its own local rule. *Ib.*

3. *Riparian rights—Diversion of waters flowing through two States—Effect of diversion.*
While from the testimony it is apparent that the diversion of the waters of the Arkansas River by Colorado for purposes of irrigation does diminish the volume of water flowing into Kansas, yet it does not destroy the entire flow. The benefit to Colorado in the reclamation of arid lands has been great, and ought not lightly to be destroyed. *Ib.*

4. *Riparian rights—Reasonableness of apportionment of waters between States.*
The detriment to Kansas by the diminution of the flow of the water, while substantial, is not so great as to make the appropriation of the part of the water by Colorado an inequitable apportionment between the two States. *Ib.*

5. *Right of State to relief from diminution of interstate waters by another State.*
While a right to present relief is not proved and this suit is dismissed, it is dismissed without prejudice to the right of Kansas to initiate new proceedings whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas River by the defendants, the substantial interest of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two States. *Ib.*

6. *Right to maintain suit in the Federal Supreme Court to abate a nuisance originating in another State.*
When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They retained the right to make reasonable demands on the grounds of their still remaining quasi-sovereign interests, and the alternative to force a suit in this court. *Georgia* v. *Tennessee Copper Co.*, 230.

7. *Quasi-sovereign capacity; maintenance of suit in, to enjoin corporation of another State from perpetrating a nuisance.*
A suit brought by a State to enjoin a corporation having its works in another State from discharging noxious gases over its territory is not the same as one between private parties, and although the elements which would form the basis of relief between private parties are wanting, the State can maintain the suit for injury in a capacity as quasi-sovereign, in which capacity it has an interest independent of and behind its citizens in all the earth and air within its domain; and whether insisting upon bringing such a suit results in more harm than good to its citizens, many of whom may profit through the maintenance of the works causing the nuisance, is for the State itself to determine. *Ib.*

8. *Exclusion of right to regulate water rates.*

A State may, in matters of proprietary rights, exclude itself and authorize its municipal corporations to exclude themselves, from the right of regulation of such matters as water rates. *Vicksburg* v. *Waterworks Co.*, 496.

See COMMERCE, 1;
CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 12;
CORPORATIONS, 2;
JURISDICTION, A 1, 4, 5, 6;
LOCAL LAW;
NAVIGABLE WATERS;
PUBLIC LANDS, 5;
RAILROADS, 5, 6;
TAXES AND TAXATION.

STATUTE OF LIMITATIONS.

See CORPORATIONS, 4.

STATUTES.

A. CONSTRUCTION OF.

1. *Presumption of legislative intent as to construction of statute enacted in same words as another.*

The reënactment of a statute in the same words carries with it the presumption that the legislature is satisfied with the construction which it has notoriously received from those whose duty it has been to carry it out; and this presumption is as strong as one that the enactors of the original statute which was adopted verbatim from one of another State knew a single decision of the courts of that State giving a different construction to the statute. *Copper Queen Mining Co.* v. *Arizona Board*, 474.

2. *Construction by Supreme Court of Arizona of § 2282, Rev. Stat. of that State, followed.*

The construction by the Supreme Court of Arizona of § 2282, Rev. Stat., of that State sustained by this court as to the power of the Territorial Board of Equalization to increase the total valuation of the property in the Territory above the sum of the returns from the Board of Supervisors of the several counties, and to change the valuations of particular classes of property within the several counties. *Ib.*

See ARMY AND NAVY, 1;
CUSTOMS DUTIES, 3;
FEDERAL QUESTION, 5;
PENALTIES AND FORFEITURES, 1, 2;
PRACTICE AND PROCEDURE, 2.

B. OF THE STATES UNITED.

See ACTS OF CONGRESS.

C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCKHOLDERS.

See CONSTITUTIONAL LAW, 2, 6;
CORPORATIONS, 1, 2.

STREETS AND SIDEWALKS.
See CONSTITUTIONAL LAW, 3, 5.

TARIFF.
See CUSTOMS DUTIES;
PHILIPPINE ISLANDS.

TAXES AND TAXATION.

1. *Effect of attempt of owner to escape taxation in one State on right of another to tax note therein.*

An attempt to escape proper taxation in one State on the debt represented by a note does not confer jurisdiction on another State, not the residence or domicil of the owner, to tax the note on account of its mere presence therein. *Buck* v. *Beach*, 392.

2. *Of mortgage notes; effect of presence in State.*

Mortgage notes made and payable in Ohio and secured by mortgages on property in that State, the owner whereof resides in New York, are not taxable in Indiana because they are therein for safe keeping. *Ib.*

3. *Unconstitutionality of taxation of notes by State not the residence or domicil of owner.*

The old rule of *mobilia sequuntur personam* has been modified so that the owner of personal property may be taxed on its account at its *situs* although not his residence, or domicil; but the mere presence of notes within a State which is not the residence or domicil of the owner does not bring the debts of which they are the written evidence within the taxing jurisdiction of that State, and a tax thereon by that State is illegal and void under the due process clause of the Fourteenth Amendment. *Ib.*

See STATUTES, A 2.

TENTH AMENDMENT.
See CONGRESS, POWERS OF.

TERRITORIES.
See CONGRESS, POWERS OF.

TIMBER CUTTING.
See INDIANS, 2.

TITLE.
See INDIANS, 1, 2; PLEDGE, 3;
JURISDICTION, A 2; PUBLIC LANDS, 1, 2, 3.

TRANSFERS.
See PLEDGE, 2.

TRUSTS AND TRUSTEES.

See INDIANS, 1.

TREATIES.

See INDIANS, 2;
PHILIPPINE ISLANDS;
PUBLIC OFFICERS, 1.

TRUSTEE IN BANKRUPTCY.

See PLEDGE, 3.

UNITED STATES.

See INDIANS, 1;
PUBLIC LANDS, 3.

VESSELS.

See CONTRACTS, 1.

WAIVER.

See LOCAL LAW (N. Y.)

WAREHOUSE RECEIPTS.

See PLEDGE, 2, 3.

WATERS.

See CONGRESS, POWERS OF; NAVIGABLE WATERS;
JURISDICTION, A 1; STATES, 2.

WATER RATES.

See CONSTITUTIONAL LAW, 1;
JUDGMENTS AND DECREES;
STATES, 8.

WOOL.

See CUSTOMS DUTIES, 2.

WORDS AND PHRASES.

"By reason of" held equivalent to "by virtue of." *United States* v. *Cramp & Sons Co.*, 118.

"Wool" in par. 360 of act of July 24, 1897 (see Customs Duties, 2). *Goat & Sheepskin Co.* v. *United States*, 194.